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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WEST DIV CINCINNATI

DAVID BILLUPS,
PLAINTIFF,

-vs-

JAMES McWEENEY, ET AL.,
DEFENDANTSS. /

CASE NO. C-1-01-377
JUDGE SPIEGEL
MAGISTRATE JUDGE HOGAN

STATEMENTS OF UNDISPUTED FACTS IN SUPPORT
OF PLAINTIFF'S RULE 11 MOTION AND IN SUPPORT
OF THE DENIAL OF DEFENDANT AUDREY
YOUNG'S SUPPLEMENTARY OBJECTION

Plaintiff, David Billups, makes the following statement of undisputed facts in support of the Rule 11 Motion and in support of the denial of Defendant Audrey Young's Supplementary Objection:

POINT I

Defendants repeatedly state in the Supplementary Objection, cash slips are normally processed and paid out on Fridays:

1. Supplementary Objection at page 2, filed 11.24.03.
2. Defendants' Reply at page 2, filed 12.18.03.
3. Affidavit of Ron Watts at #5 Defendants' Exhibit "C", filed 11.24.03.

This is a false statement made by the Defendants designed to mislead this Court.

First, there is no policy , nor authority which gives the Defendants the right to hold on to, legal mail and legal cash slips and not process them until Fridays.

Pursuant to Exhibit "H" attached to "Plaintiff's Motion for Partial Summary Judgment", filed 10.22.01 and page 8 of "Defendants' Response to Court's Show Cause Order And

Opposition To Plaintiff's Motion For Partial Summary Judgment", filed 4.8.02, both the inspector and Defendants state checks were to be issued on the 13th, meaning December 13, 1999, which was a Monday, also Defendants' Exhibit "B".

Defendants' Exhibit "D" and Plaintiff's Motion For Partial Summary Judgment" at Exhibit "D", is the computer printout of Plaintiff's December 1999 account statement.

This statement shows from 12.2.99 to 12.8.99 Plaintiff had enough funds to cover the filing fee and postage.

The statement further shows that Plaintiff's filing fee was not processed until 12.22.99, which was a Wednesday. Then the Cashier further continued to hold on to Plaintiff's legal mail until 12.29.99, which was also a Wednesday, to process the postage and finally mail out Plaintiff's legal mail, even though Plaintiff had more than enough funds to cover both the filing fee and postage on 12.22.99.

In Summary, Defendants claim the procedure is to process cash slips on Fridays, even though there is no policy, nor authority which permits the Cashier to hold legal mail and legal cash slips and not process them until Fridays. Further, Defendants own filings and exhibits establishes legal cash slips are processed on Mondays, Wednesdays, and really any day of the week. This refutes Defendants claims cash slips are processed only on Fridays.

POINT II

Defendants state on page 2 of the Supplementary Objection, "If he had submitted the cash slip any time during the week that he returned to the institution, it could have been processed on December 3rd and sent out that day"(sic). Pursuant to Plaintiff's Exhibit "B" and "C" attached to Plaintiff's Motion For Summary Judgment", filed 10.22.01, it is verified by Unit

Manager Ms. Terry that Plaintiff's legal mail and legal cash slips were indeed delivered to the Cashier on 12.3.99, which was a Friday.

POINT OF QUESTION:

1. Why were Plaintiff's legal mail and legal cash slips not processed when delivered to the Cashier on 12.3.99?
2. Why were Plaintiff's legal mail and legal cash slips not processed on 12.6.99, 12.7.99, or 12.8.99 when in the possession of the Cashier?
3. Exactly whose policy is it which is to hold on to legal mail and legal cash slips and not process them until Fridays?

CONCLUSIONS

For the foregoing reasons, Plaintiff asserts the foregoing undisputed facts supports Plaintiff's Rule 11 Motion and supports a Summary Judgment finding in favour of the Plaintiff and against Defendant Young.

Respectfully Submitted,

David Billups
David Billups
P.O. Box 7010-211903
Chillicothe, Ohio 45601

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing has been served to Counsel for Defendants at: Marianne Pressman#0059512, 441 Vine St., Cincinnati, OH., 45202 this 26th day of December 2003 by regular U.S. Mail.

David Billups
David Billups